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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/935,746	08/24/2001	Motohiko Sakamaki	110439	9915

25944 7590 03/28/2003

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EXAMINER

RAO, SHRINIVAS H

ART UNIT	PAPER NUMBER
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2814

DATE MAILED: 03/28/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/935,746

Applicant(s)

SAKAMAKI ET AL.

Examiner

Steven H. Rao

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 February 2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 to 5 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) 1 to 5 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 2/26/02 is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Priority

Receipt is acknowledged of paper submitted under 35 U.S.C. 119(a)-(d), claiming priority from Japanese Patent Application No. 2000-268518 filed on September 05, 2000 which papers have been placed of record in the file.

Information Disclosure Statement

Acknowledgment is made of receipt of Applicant's Information Disclosure Statement (PTO-1449) filed on 08/24/2001.

The references on PTO 1499 submitted on 08/24/01 are acknowledged. All the cited references have been considered. However the foreign patents and documents cited by applicant are considered to the extent that could be understood from the abstract and drawings.

Drawings

The drawings filed on 06/24/01 are accepted by the drafts person.

Claim Rejections - 35 USC § 103

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 to 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Suzuki et al. (U.S. Patent No. 6,310,674, herein after Suzuki) and Mohebban (U.S. Patent No. 4,838, 653, herein after Mohebban) .

With respect to claim 1, Suzuki describes a display device including : a pair of substrates which face each other (Suzuki figure 1, col. 6 lines 33-35) and at least one of which transmits light (Suzuki col. 6 lines 39-42) a spacer sandwiched between the pair of substrates (Suzuki col. 7 lines 13-15, not shown in the figures) and two types of particles of different colors (Suzuki col. 7 lines 61-65) and different electric characteristics (Suzuki col.3 lines 20-25) all sealed in an inner space formed by the pair of substrates and spacer (Suzuki figure 1) .

Suzuki does not specifically mention the inner space is hermetically sealed up.

However Mohebban in col. 5 lines 23-30 describes the inner space is hermetically sealed up to protect the device from environmental moisture or atmospheric oxygen and to form a device that has long term durability of the device.

Therefore it would have been obvious to one of ordinary skill in the art to include Mohebban's hermetically sealing the inner space instead of the non specified sealing of Suzuki in Suzuki's device to protect the device from environmental moisture or

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atmospheric oxygen and to form a device that has long term durability of the device. (Mohebban col. 5 lines 23-30).

With respect to claim 2, wherein the spacer is formed on one pair of substrates (Suzuki col. 7 lines 16 to 24) and is fixed to the other substrate with a resin (Suzuki col. 7 line 19).

With respect to claim 3, wherein the space formed by the outer surface of the spacer and the pair of substrates is filled with a resin (Suzuki col. 7 lines 15-20).

With respect to claim 4, wherein an elastic member is forcedly inserted in to the space formed by the outer surface of the spacer and the pair of substrates .

The recitation , "an elastic member is forcedly inserted in to the space" is taken to be a product by process limitation and therefore non limiting. See In re Fessman, 180 USPQ 324, 326 (CCPA 1974), In re Marosi et al. 218 USPQ 289,292 (Fed. Cir. 1983) and particularly In re Thrope , 227 USPQ 964,(Fed. Cir. 1985) all of which make it clear that it is the patentability of the final structure of the gleaned from the process steps, which must be determined in product by process claim and not the patentability of the process. See also MPEP 2113. More ever an old and obvious product produced by a new method is not a patentable product, whether claimed in " product by process" claims or not.


An elastic member between the spacer and the pair of substrates is described by Suzuki in col. 7 lines 14 to 25.

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With respect to claim 5, wherein the spacer is formed on one of the pair of substrates and an elastic member is put between one end of the spacer adjacent to the other substrate and the other substrate. (Suzuki col. 7 lines 5 to 25).

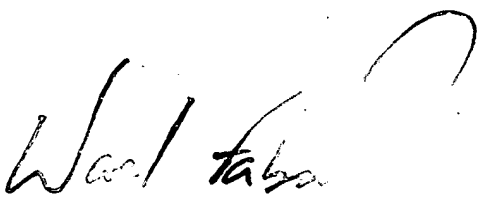
Any inquiry concerning this communication or earlier communication from the examiner should be directed to Steven H. Rao whose telephone number is (703) 306-5945. The examiner can normally be reached on Monday- Friday from approximately 7:00 a.m. to 5:30 p.m.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0956. The Group facsimile number is (703) 308-7724.


Steven H. Rao

Patent Examiner

March 20, 2003.


SUPERVISOR, PRIMARY EXAMINER
TECHNOLOGY CENTER 2600